

### REMARKS

Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

#### Status of the Claims

Claims 4, 6-8, and 10-14 are pending. Claims 1-3, 5 and 9 were canceled by prior amendment. Claims 4, 8 and 12-14 have now been amended. No new matter has been added.

#### Rejection under 35 U.S.C. §102(e) based on Kleider

Claims 4, 6-8 and 10-14 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,084,919 to Kleider et al. ("Kleider").

Kleider describes a communication system in which a spectrum analysis unit 218 within a second communication unit 204 (i.e., a receiver) monitors the spectral profile of a channel 206. Information indicative of the spectral profile of the channel 206 is transferred from the spectral analysis unit 218 to a transmit parameter determination unit 214 within the first communication unit 202 (i.e., a transmitter). See Kleider, col. 3, lines 46-48; Fig. 1. The transmit parameter determination unit 214 uses the spectrum information to determine transmit parameters "in light of the spectral profile." See Kleider, column 3, lines 50-53.

Independent claim 4 has now been amended so as to recite "receiving, by the at least one receiver station, the digital radio program transmission; evaluating digital quality data of the received digital radio program transmission using the at least one receiver station so as to determine corresponding parameter values" and "determining alternative transmit frequencies for a subsequent

transmission of the same digital radio program using the transmitted corresponding parameter values.” Support for the amendment can be found in the Specification at, for example, page 3, ¶ 0011. Independent claims 8 and 12-14 have now been amended to recite similar subject matter. It is respectfully submitted that Kleider does not disclose evaluating the digital quality data of a received digital radio transmission to determine corresponding parameter values using a receiver station, and determining alternative transmit frequencies for a subsequent transmission of the same digital radio program using the transmitted corresponding parameter values, as recited in amended independent claim 4, and similarly recited in amended independent claims 8 and 12-14. In contrast, Kleider merely uses spectrum information to determine transmit parameters in light of the spectrum profile. See Kleider, column 3, lines 50-53. Kleider is silent regarding transmitting parameter values corresponding to an evaluation of a received digital radio program transmission and determining alternative transmit frequencies, for a subsequent transmission of the same digital radio program, as recited.

Because Kleider fails to disclose at least the above-recited features of independent claims 4, 8 and 12-14, Kleider cannot anticipate any of claims 4, 8 and 12-14 or their dependent claims.

Reconsideration and withdrawal of the rejections of claims 4, 6-8, and 10-14 under 35 U.S.C. § 102(e) based on Kleider is respectfully requested.

CONCLUSION

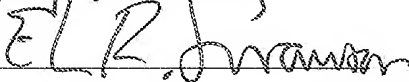
In view of the foregoing it is believed that claims 4, 6-8, and 10-14 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

If there are any other issues remaining which the Examiner believes could be resolved through a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below.

The Commissioner is hereby authorized to charge any unpaid fees deemed required in connection with this submission, including any additional filing or application processing fees required under 37 C.F.R. §1.16 or 1.17, or to credit any overpayment, to Deposit Account No. 04-0100.

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Respectfully submitted,

By 

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